

**Attachment belonging to the Island Ordinance establishment of
several draft-national-ordinance country Curacao (A.B. 2010. 87)**

National ordinance regulating the
establishment of an ombudsman
(National ordinance ombudsman)

IN THE NAME OF THE QUEEN!

THE GOVERNOR of the Netherlands Antilles,

Having taken into consideration:

that it is necessary for the execution of article 69 of the Constitution,
to make a special provision for investigation in order to, in relevant
cases, investigate conduct of the government towards the citizen as
well as, following this investigation, make proposals for possible
measures to be taken;

Has decreed, having heard the Advisory Council, by mutual
agreement of Parliament, the following national ordinance:

§. 1 General provisions

Article 1

In this national ordinance and the resulting provisions we understand
the following under:

ombudsman:	the ombudsman, referred to in article 2;
minister:	the minister of General Affairs;
administrative body:	1°. the minister who is directly involved; 2°. a different organ to be appointed by national decree, laying down general measures clad with public authority;
official:	1°. an official according to national ordinance on Substantive Civil Servant Law and a former civil servant; 2°. a person with whom an administrative body has concluded an employment contract under civil law, also after the termination of this employment contract; 3°. a conscript according to the Conscription ordinance 1961, also after termination of the conscription;

- 4°. other persons working under the responsibility of the administrative body, also after termination of the duties;
- conduct: the action or the failure to act by an administrative body in a particular matter;
- court of justice: persons or boards, by or under national ordinance fully or partially charged with the administration of justice and, insofar as this administration of justice is concerned, independent from the public administration.
2. A conduct of a civil servant in the performance of his function is considered as a conduct of the administrative body under whose responsibility he works.

§ 2. The ombudsman

Article 2

1. There is an ombudsman.
2. The ombudsman has the duty, upon request or on his own initiative, to investigate the conduct of administrative bodies.

Article 3

1. The ombudsman is appointed by Parliament. The appointment of the ombudsman shall occur on a recommendation, containing at least the names of three persons which was made in joint consultation by the vice-president of the Advisory Council, the president of the Common Court of Justice of the Netherlands Antilles and Aruba and the president of the Government Audit Office.
- 2. In order to be appointed as Ombudsman, one needs to have the Dutch nationality and be a resident of Curaçao.**
3. The appointment shall be for a period of six years. The ombudsman shall only once be eligible for reappointment for a second term.
4. If Parliament intends to reappoint the ombudsman, Parliament can decide that the second paragraph, second sentence, shall be excluded.
5. If it appears that Parliament shall not be able to arrive, on time, at the appointment of a new ombudsman, Parliament shall as soon as possible provide for the deputizing of the office of ombudsman.
6. The deputizing shall be legally terminated at the time on which a new ombudsman takes up his duties.

Article 4

1. Parliament shall dismiss the ombudsman as of the month following that in which he reaches his seventieth birthday.
2. Parliament shall furthermore dismiss the ombudsman:
 - a. at his request;
 - b. when he, on account of diseases or ailments is permanently unfit to fulfill his duties;
 - c. on taking up an office or position as referred to in article 6;**
 - d. at the loss of the Dutch citizenship;
 - e. when he, by a judicial ruling which has become irrevocable, has been sentenced because of a crime or a measure imposed on him, by such a ruling, which will result in deprivation of freedom;
 - f. when he, by a judicial ruling which has become irrevocable, is placed under legal control, has been declared bankrupt, has obtained a suspension of payment or is imprisoned for debts;

Article 5

1. Parliament shall suspend the ombudsman in case:
 - a. against him there is a serious suspicion of facts and circumstances which will lead to dismissal under article 4, second paragraph, under e or f;
 - b. he is in provisional custody;
 - c. he, by a judicial ruling which has not yet become irrevocable, has been sentenced because of a crime or a measure imposed on him, by such a ruling, which will result in deprivation of freedom;
 - d. he is placed under legal control, has obtained a suspension of payment or is imprisoned for debts pursuant to a judicial ruling which has not yet become irrevocable.
2. In the case, referred to in the first paragraph, under a, the suspension shall cease after three months. Parliament can renew the taken measure each time for no more than three months.
3. In the cases, referred to in the first paragraph, under b, c and d, Parliament shall terminate the suspension as soon as the reason for the measure has expired.
4. Parliament can determine, in the decision in which the ombudsman is suspended, that for the duration of the suspension, no salary or only a part of the salary shall be enjoyed, in the last case under indication of the part that will be enjoyed.
5. If the suspension was terminated other than through dismissal, Parliament can decide that the salary that was not enjoyed, shall still be fully or partially paid out, in the last case under indication of the part that will be paid out.

Article 6

1. The ombudsman cannot also be:
 - a. a member of public boards for which the choice occurs by or under elections called under statutory regulation;
 - b. a member of a fixed board of advice and assistance to the government;
 - c. a lawyer, counsel or notary;
 - d. a board member of a political party, a trade union or an association or foundation that receives a subsidy from the government.
2. Furthermore, the ombudsman cannot occupy a public position to which a fixed remuneration or allowance is connected.
3. Apart from that, the ombudsman shall not fill positions of which the execution is undesirable in view of a proper performance of his duties or on the preservation of his impartiality and independence or of the trust therein.
4. The positions that the ombudsman fills outside of his office, shall be made public by him.

Article 7

1. The salary of the ombudsman shall be determined by national ordinance.
2. The Pension plan political authorities shall equally apply to the ombudsman, provided that he shall have equal rights as a member of parliament.
3. By national decree, laying down general measures, the other rights and obligations of the ombudsman, which are part of his legal position, shall be regulated.

Article 8

Before taking up his duties, the ombudsman shall make, before the president of Parliament:

- a. the oath or statement and affirmation that he, to obtain his appointment, neither directly nor indirectly, under whatever name or under any pretext whatsoever, has given or promised anything to someone, and also that he in order to do or not do something in his position has neither directly nor indirectly accepted, nor will he accept, any gift or any promise from someone;
- b. the oath or affirmation of allegiance to the Constitution.

Article 9

1. Parliament shall appoint at the request of the ombudsman, one or more persons as deputy ombudsman. Parliament shall, in the appointment of the deputy ombudsman, pay so much attention to a

recommendation, made by the ombudsman and which contains the names of at least three persons.

2. The appointment of a deputy ombudsman shall occur for the duration of the term of office of the ombudsman on whose request he was appointed.

3. The ombudsman regulates the activities of a deputy ombudsman. The ombudsman can determine that one or more of the authorities of the ombudsman shall also be exercised by a deputy ombudsman taking into account any guidelines to be established by the ombudsman.

4. The ombudsman shall regulate his substitution by a deputy ombudsman in case he is temporarily unable to fulfill his duties.

5. If no deputy ombudsman is present or available, Parliament shall provide as soon as possible the substitution of the ombudsman. In that case, the substitution shall terminate as soon as the ombudsman is able again to fulfill his duties, or if the ombudsman is suspended, the moment that the suspension terminates.

6. If the ombudsman passes away before the end of his term of office or is dismissed according to article 4, the deputy ombudsman shall remain, contrary to the second paragraph, in office until a new ombudsman assumes office.

7. Articles 4 to 6 and 8 shall equally apply to the deputy ombudsman.

Article 10

1. The ombudsman shall have at his disposal an office in order to fulfill his duties.

2. The ombudsman shall determine the method of working and the organization of the office.

3. The ombudsman shall be authorized to hire personnel on employment contract under civil law. The employment conditions of the personnel shall be laid down in a regulation which shall be determined by the ombudsman after approval obtained by national decree.

4. Contrary to the third paragraph, the Pension national ordinance public servants and the regulation reimbursement treatment and nursing expenses public servants shall equally apply to the personnel.

5. The budget of the office as well as the justification of the expenditure are part of the budget and expenses respectively of the Nation, under the chapter **Public bodies**.

Article 11

- 1. The ombudsman shall be authorized, within a sum made available to him by budget, to spend money and enter into obligations for the execution of his duties.**
- 2. The ombudsman shall annually make a proposal to Parliament for the necessary resources for a proper execution of his duties.**
- 3. The ombudsman shall justify the receipts and expenditure for the preceding financial year in the report to Parliament as referred to in article 27.**

§ 3 Proceedings

Article 12

1. Everybody has the right to ask the ombudsman to investigate the way in which an administrative body has behaved in a certain matter towards a natural or legal person, unless more than one year has elapsed since then.
2. If within a year after the conduct occurred, that conduct, to the discretion of a court or according to a legally arranged administrative provision is subject to the discretion of another body, the term shall end one year after the date on which in those proceedings, a ruling was made, against which no appeal shall anymore lie or the proceedings were terminated in a different manner.
3. Before commencing with the investigation referred to in the first paragraph, the ombudsman shall verify if the petitioner has informed the administrative body, and as far as applicable, the official in question, of his objections against the conduct and given him the opportunity to make his views about that known.
4. The petition shall be in writing and shall contain at least:
 - a. the name and address of the petitioner;
 - b. a description as clearly as possible of the conduct to which the petition refers;
 - c. an indication of the administrative body or, where applicable, if possible of the official in question, to which the petition refers;
 - d. a description where, when and who experienced the conduct;
 - e. the reason why the petitioner believes to make objection against the conduct; and
 - f. how and to whom the notification referred to in the third paragraph took place and, if the view referred to therein is given, a description thereof.
5. The ombudsman shall be obliged to respond to a petition as referred to in the first paragraph except in the cases, referred to in articles **14 and 15**.

6. If the petition is stated in a language other than Dutch, Papiamentu or English and a translation is necessary for a proper handling of the complaint, the ombudsman can decide not to take up the petition, provided that the petitioner has had the opportunity, within a period set by the ombudsman, to complete the petition with a translation.
7. If the petitioner expresses the desire for this, the office of the ombudsman shall cooperate with the preparation of the petition.
8. The ombudsman shall inform the petitioner within thirty days after submitting the petition concerning its handling.
9. The ombudsman can, during the handling of a petition, make the petitioner and the administrative body proposals to mutually reach a solution with respect to the contested conduct.

Article 13

1. If in the opinion of the ombudsman, with respect to the conduct referred to in the petition, a legally arranged administrative provision shall remain applicable for the petitioner, he shall immediately refer him to the competent authority and he shall transfer the petition, after noting the date of receipt thereon, to that authority.
2. For the application of the regulation on which the unsettled provision is based, the petition shall be considered to comply with the provisions relating to the manner of presentation and addressing appearing in that regulation and furthermore, the time in which the petition was received by the ombudsman, shall be considered as the time in which the case was introduced before the authority referred to in that regulation.
3. The authority, referred to in the second paragraph, shall give the petitioner the opportunity, within thirty days after making an announcement thereof, to complete or modify his petition according to the rules applicable for that provision and, where appropriate, to settle the fees payable for handling.

Article 14

1. The ombudsman shall not be obliged to start or continue an investigation as referred to in article 12, first paragraph, if:
 - a. the petition was submitted too late or does not comply with the requirements, indicated in article 12, fourth paragraph;
 - b. the petition is clearly unfounded;
 - c. the interest of the petitioner or the weight of the conduct is clearly insufficient;
 - d. the petitioner is a different person from the person against whom the conduct took place;
 - e. a petition, concerning the same conduct, is being handled by him or – barring a new fact or a new circumstance that became known

and such a thing could have led to a different opinion on the conduct in question – was concluded by him;

f. with regard to the conducts, a legally arranged administrative provision has remained applicable for the petitioner and he has not made use of this;

g. with regard to the conduct, other than according to a legally arranged administrative provision, a legal authority made the ruling;

h. with regard to a conduct of the administrative body that is closely linked with the topic of the petition, proceedings are pending at a legal authority, or according to a legally arranged administrative provision at a different authority.

Article 15

The ombudsman shall not be authorized to start or continue an investigation:

a. if the matter belongs to general government policy, including the general policy to maintain legal order, or to the general policy of the concerned administrative body;

b. with respect to general binding regulations;

c. as long as with regard to the conduct, a legally arranged administrative provision remains applicable or according to such a provision proceedings are pending;

d. as long as with regard to the conduct, other than according to a legally arranged administrative provision, proceedings are pending at a legal authority, or an appeal lies against a ruling that was made in such proceedings;

Article. 16

1. If the ombudsman on the basis of article **14** or **15** does not follow up on a petition to start an investigation, or does not continue the investigation, he shall as soon as possible inform the petitioner thereof in writing and stating the reasons. In case he does not continue an investigation, he shall also make the aforementioned announcement to the concerned administrative body and, where applicable, to the concerned official.

2. The ombudsman shall give, at the request of any person, a copy or extract of the announcement, referred to in the first paragraph. With regard to the remunerations to be charged for this and any free provision, the National decree implementing rules freedom of information and any free provision thereof, the National decree rates

in civil cases shall equally apply. He shall also place such an announcement for inspection at a location to be indicated by him for this.

Article 17.

1. The ombudsman shall give opportunity to the administrative body and if applicable, the official, to whose conduct the investigation relates, as well as in the case, referred to in article 12, first paragraph, the petitioner, to explain their positions in writing or – at the discretion of the ombudsman - orally, either in each other's presence or not.
2. The parties involved can let themselves be represented or assisted by an authorized person. The authorized person shall submit a written authorization for this of the person that he represents, unless he's a lawyer or appears in the presence of the person that he represents.

Article 18

1. The ombudsman shall be authorized at the administrative body in question, to ask the petitioner and, if applicable the official in question, for all information regarding a matter related to the investigation. The requested information shall be provided within a period to be indicated by the ombudsman.
2. Information related to the policy, pursued under responsibility of an administrative body, the ombudsman can only obtain from the officials involved therein, through the intervention of that body.
3. The body by which intervention the information is obtained, can let itself be represented upon hearing the officials.
4. The parties involved, referred to in the first paragraph, can be exempted from providing information based on legal or other important reasons. The ombudsman can, in support of the appeal on the right to claim exemption, ask for submission of proof for this.

Article 19

1. The ombudsman shall be authorized, at the service of the investigation, to summon the administrative body, the official to whose conduct the investigation is related, the petitioner, witnesses, experts and interpreters.
2. The witnesses, experts and interpreters shall be obliged to appear before the ombudsman and provide their services and collaboration as such.
3. The ombudsman can give orders, that witnesses, experts and interpreters who, even though summoned, failed to appear, are presented before him by means of the long arm of the law to comply with their obligation.

4. Experts who are summoned shall perform their task impartially and to the best of their knowledge.
5. The interpreters and experts shall be obliged to maintain confidential that which they find out regarding service provision.
6. The witnesses, experts and interpreters can let themselves be exempted from their obligations due to legal or other important reasons. Article **18**, fourth paragraph, second sentence, shall be applicable.
7. The ombudsman shall furthermore be authorized, at the service of the investigation, to occasionally make an appeal to the expertise available within the public administration. The parties involved shall be obliged to give all collaboration for this.

Article **20**

Summons according to articles **18** and **19** shall occur by registered letter, signed by the ombudsman.

Article **21**

1. The ombudsman may decide that witnesses will not be heard and experts or interpreters will not be allowed to exercise their duty than after taking an oath or promise in the hands of the ombudsman.
2. Witnesses shall take the oath or promise "that they will say the whole truth and nothing but the truth"; experts shall take the oath or promise "that they shall report according to their conscience"; and interpreters shall take the oath or promise "that they shall fulfill their duties as an interpreter meticulously".

Article **22.**

1. The persons summoned by the ombudsman according to this national ordinance shall receive, if so desired, a remuneration from the public money for travel and accommodation expenses as well as due to loss of time and expenses related to this in accordance with that which is stipulated by or under the National decree rates in civil matters.
2. The first paragraph is not applicable to those who are employed in the public service, if they have been summoned in connection with their duties as such.
3. The ombudsman shall budget the remuneration that is payable according to this article.

Article **23.**

1. The ombudsman shall at all times be authorized to demand inspection of the books and documents, of which the inspection, according to his reasonable judgment, is necessary for fulfilling his duties, and to take copies thereof.

2. The ombudsman shall at all times have access to places, of which the entry, according to his reasonable judgment, is necessary for fulfilling his duties, with the exception of homes.

3. Entering homes may only occur with the consent of the occupant.

Article. 24

1. Before concluding the investigation and including the findings thereof in a report, the ombudsman shall inform the administrative body and where applicable the official whose conduct was the object of the investigation, as well as the petitioner referred to in article 12, first paragraph, of his temporary findings.

2. The ombudsman shall give the administrative body, the official and the petitioner the opportunity to give their opinions on the temporary findings within a period stipulated by him.

Article 25

1. As soon as the ombudsman has completed the investigation, he shall make a report, in which he includes his findings and expresses his opinion whether the conduct of the administrative body was fully or partially appropriate.

2. The ombudsman shall consider, if the concerned conduct was topic of a legal ruling other than according to a legally arranged administrative provision, the legal foundations of that ruling.

3. The ombudsman shall send the report as soon as possible to the administrative body and, where applicable, to the official whose conduct was topic of the investigation, as well as in the case referred to in article 12, first paragraph, to the petitioner.

4. The ombudsman can make recommendations to the administrative body to take measures. The administrative body shall inform the ombudsman if, and if that's the case, how, it has responded to the recommendations and shall motivate the fact of not taking up the recommendations or deviating from the same.

5. Contrary to the first paragraph, the ombudsman shall not give an opinion if the investigation has provided him, in his opinion, with insufficient certainty about the facts of the conduct against which the petition is directed.

6. Article 16, second paragraph, shall equally apply.

§ 4 Final provisions

Article 26.

Anyone who is involved in the implementation of this national ordinance and with that gets access to data, the confidential nature of which he knows or must reasonably presume, and for whom there is not already a confidentiality requirement under office, profession or legal regulation with regard to those data, shall be obliged to maintain the confidentiality of those data, except insofar as any legal regulation obliges him to communication or the need to communication, results from his duties.

Article 27

1. The ombudsman shall submit an annual report of its activities to Parliament.
2. The ombudsman shall make sure that the report is made public and widely available.
3. Article 11 of the National ordinance freedom of information shall equally apply provided that the ombudsman can add data to the report, only as confidential information for members of Parliament and the ministers.
4. Parliament shall be authorized to call the ombudsman to appear in a session of Parliament in order to provide information.

Article. 28.

1. The ombudsman shall be authorized, either at the request of Parliament or not, immediately after concluding an investigation, to inform Parliament about his findings and his opinion.
2. Article 27, second, third and fourth paragraph, shall apply.

Article 29

This national ordinance shall enter into force as of the day following that of the issue of the Official Journal, in which the notification was made.

Article 30

This national ordinance is cited as: National ordinance ombudsman.